

4.0 CONSULTATION AND COMPLIANCE

4.1 CONSULTATION

FERC regulations require that applicants consult with appropriate resource agencies and other entities before filing an application for license. This consultation is the first step in complying with the Fish and Wildlife Coordination Act, the Federal Endangered Species Act (FESA), the National Historic Preservation Act (NHPA), and other federal statutes. Pre-filing consultation must be complete and documented according to the FERC regulations.

On January 11, 2001, FERC approved DWR's request to use the Alternative Licensing Procedures (ALP) for the relicensing of the Oroville Facilities. The ALP is intended to facilitate participation and improve communication among interested parties, avoid unnecessary conflict, increase confidence that all reasonable alternatives have been adequately and fairly evaluated, and increase the likelihood of a comprehensive settlement. Under the ALP, information and analyses relevant to relicensing are developed in collaboration with federal, State, and local agencies as well as federally recognized Indian tribes, nongovernmental organizations (NGOs), interested parties, and members of the public.

After receiving FERC approval to use the ALP, DWR launched one of the most extensive collaborative relicensing processes in the nation. Hundreds of meetings and thousands of hours were expended allowing Indian Tribes, state resource agencies, federal agencies, local governmental agencies, water agencies, private citizens, environmental interests, recreational interests, and citizen groups to participate in helping shape the Application. DWR provided over \$600,000 in direct contributions to assist Oroville governmental agencies, Indian Tribes, and environmental interests participate in the ALP. An additional \$3,000,000 was authorized for immediate local recreational improvements to document DWR's intent to address reasonable concerns raised through the collaborative process.

As mentioned above, the Oroville Facilities relicensing process has involved extensive coordination and commitment by a variety of parties over the past several years. From late 2000 through 2004, DWR hosted monthly Plenary and Work Group meetings, as well as ongoing Task Force meetings. Of the estimated 1,500 hours of total meeting time, approximately 80 percent were held in the Oroville area. Written summaries were prepared for all meetings and posted on the relicensing website for comment by participants and review by the public. The objective of the collaborative process is to develop a settlement agreement on various issues and PM&E measures. FERC will consider the settlement agreement, along with information and analyses contained in the final license application, in its decision to issue a new hydroelectric license. A summary of events is provided in Table A-1 of Appendix A. A summary of the history of the collaborative process is provided in Table A-2 of Appendix A.

4.1.1 Agency Consultation

In October 1999, DWR distributed an informal mailer to known and potentially interested government agencies, federally recognized Indian tribes, and other interested parties and organizations to initiate development of a mailing list of those interested in the Oroville Facilities. In addition to inviting involvement in the relicensing process, DWR initiated discussion with resource agencies and potentially interested parties regarding the relicensing process in early 2000.

The collaborative process is guided by “process protocols,” which were developed by the Collaborative (participants in the consultation process for the relicense). The process protocols provide a framework for communication, cooperation, and consultation among all relicensing participants throughout the collaborative process. As specified in the process protocols, the Collaborative functions on three levels represented by a Plenary Group, five resource-specific Work Groups, and issue-specific Task Forces (as needed). Interested parties have been encouraged to participate in and/or observe the collaborative process. Each of the three collaborative levels is described below. Process protocols, meeting logistics, and summaries of Plenary Group and work group meetings can be viewed at DWR’s Oroville Relicensing website at <http://orovillereicensing.water.ca.gov> or in the Sacramento or Oroville Public Reference Files at the following locations:

California Department of Water Resources
1416 9th Street, Room 525
Sacramento, CA 95814

Oroville Branch of the Butte County Library
1820 Mitchell Avenue
Oroville, CA 95966

4.1.1.1 Plenary Group

The Plenary Group is composed of spokespersons for stakeholder groups involved in the relicensing process. Table 4.1-1 lists the entities participating in the Plenary Group. The Plenary Group has been responsible for maintaining a global perspective on the relicensing process, overseeing the progress of the five Work Groups, and determining how recommendations and proposals interrelate and interact with other issues and resource needs. A list of the Plenary Group meetings and the associated summaries, including decisions and action items, can be viewed in the Sacramento or Oroville Public Reference Files and on the website at <http://orovillereicensing.water.ca.gov>.

4.1.1.2 Work Groups

Work Groups were established in five resource-specific areas and are responsible for identifying resource issues, developing study plans, considering existing and new information (including study reports), and making recommendations to the Plenary Group on PM&E measures. The five Work Groups and their assignments are described

below, with participants listed in Table 4.1-2. A list of all work group meetings held throughout the consultation process is provided in Table A-1 of Appendix A.

- **Environmental Work Group:** Addresses project-related issues related to water quality, terrestrial resources, fisheries, and geomorphology.
- **Recreation and Socioeconomics Work Group:** Addresses project-related issues related to recreational facilities, access, use, and socioeconomic issues related to recreation.
- **Cultural Resources Work Group:** Addresses project-related issues related to historic and prehistoric cultural resources.

Table 4.1-1. Plenary Group participants.

Federal Agencies	State Agencies	Local Government
<ul style="list-style-type: none"> • National Oceanic and Atmospheric Administration Fisheries • National Park Service • U.S. Forest Service, Plumas National Forest • U.S. Army Corps of Engineers • U.S. Fish and Wildlife Service 	<ul style="list-style-type: none"> • California Department of Fish and Game • California Department of Water Resources • California Department of Parks and Recreation • State Water Resources Control Board • California Department of Boating and Waterways 	<ul style="list-style-type: none"> • Butte County • City of Oroville • Feather River Recreation and Park District • Lake Oroville Joint Powers Authority • Oroville Chamber of Commerce • City of Yuba City • Yuba County Water Agency
Native American Tribes	Water Agencies	Nongovernmental Organizations
<ul style="list-style-type: none"> • Berry Creek Rancheria of Konkow Maidu Indians • Konkow Valley Band of Maidu • Enterprise Rancheria • Mooretown Rancheria • Pacific Cherokee Tribal Council 	<ul style="list-style-type: none"> • State Water Contractors • Metropolitan Water District • Santa Clara Water District • Zone 7 Water Agency 	<ul style="list-style-type: none"> • American Rivers • American Whitewater/Chico Paddleheads • Berry Creek Citizens Committee • Butte County Tax Payers Association • Butte Sailing Club • Butte County Citizens for Fair Government • California Horsemen's Association—Region II • Equestrian Trail Riders/Hikers • Feather River Low Flow Alliance • JEM Farms • Oroville Foundation of Flight • Oroville Recreation Advisory Committee • Natural Heritage Institute representing American Rivers • General public

* The Oroville Recreation Advisory Committee includes local representatives from the Butte Sailing Club, Citizens for Fair and Equitable Recreation, Lake Oroville Fish Enhancement Committee, Butte County Citizens for Fair Government, the City of Oroville, Butte County, and the Oroville Chamber of Commerce.

Table 4.1-2. Work group participants.

Environmental Work Group Participants		
Federal Agencies	State Agencies	Local Government
<ul style="list-style-type: none"> • National Oceanic and Atmospheric Administration Fisheries • U.S. Forest Service, Plumas National Forest • U.S. Army Corps of Engineers • U.S. Fish and Wildlife Service 	<ul style="list-style-type: none"> • California Department of Fish and Game • California Department of Water Resources • California Department of Parks and Recreation • California Department of Conservation • State Water Resources Control Board 	<ul style="list-style-type: none"> • Butte County • City of Yuba City • Yuba County Water Agency
Native American Tribes	Water Agencies	Nongovernmental Organizations
<ul style="list-style-type: none"> • Enterprise Rancheria 	<ul style="list-style-type: none"> • State Water Contractors • Metropolitan Water District • South Feather Water and Power Agency • Kern County Water District 	<ul style="list-style-type: none"> • American Rivers • California Waterfowl Association • Natural Heritage Institute • General public
Recreation and Socioeconomics Work Group Participants		
Federal Agencies	State Agencies	Local Government
<ul style="list-style-type: none"> • National Park Service • Plumas National Forest 	<ul style="list-style-type: none"> • California Department of Fish and Game • California Department of Water Resources • California Department of Parks and Recreation • State Water Resources Control Board 	<ul style="list-style-type: none"> • Butte County • City of Oroville • Feather River Recreation and Park District • Lake Oroville Joint Powers Authority • City of Paradise
Native American Tribes	Water Agencies	Nongovernmental Organizations
<ul style="list-style-type: none"> • Berry Creek Rancheria of Konkow Maidu Indians • Enterprise Rancheria • Mooretown Rancheria • Mechoopda Indian Tribe of Chico Rancheria • Pacific Cherokee Tribal Council 	<ul style="list-style-type: none"> • State Water Contractors • Metropolitan Water District • Kern County Water Agency 	<ul style="list-style-type: none"> • American Whitewater/Chico Paddleheads • Berry Creek Citizens Committee • Butte County Tax Payers Association • Butte Sailing Club • Butte County Citizens for Fair Government • Citizens for Fair and Equitable Recreation • California Horsemen's Association—Region II • Equestrian Trail Riders/Hikers

Table 4.1-2. Work group participants.

Recreation and Socioeconomics Work Group Participants (continued)		
Native American Tribes	Water Agencies	Nongovernmental Organizations
		<ul style="list-style-type: none"> • Experimental Aircraft Association, Chapter 1112 • Feather River Low Flow Alliance • Lake Oroville Bicycle Organization • Lime Saddle Marina • Lake Oroville Fish Enhancement Committee • Oroville Chamber of Commerce • Oroville Foundation of Flight • Oroville Model Airplane Club • Oroville Recreation Advisory Committee • Oroville Water Ski Club • Shasta Paddlers • General public
Cultural Resources Work Group Participants		
Federal Agencies	State Agencies	Local Government
<ul style="list-style-type: none"> • U.S. Bureau of Indian Affairs • U.S. Bureau of Land Management • U.S. Forest Service, Plumas National Forest 	<ul style="list-style-type: none"> • California Department of Water Resources • California Department of Parks and Recreation 	<ul style="list-style-type: none"> • Butte County
Native American Tribes	Water Agencies	Nongovernmental Organizations
<ul style="list-style-type: none"> • Berry Creek Rancheria of Konkow Maidu Indians • Pacific Cherokee Tribal Council • Konkow Valley Band of Maidu • Enterprise Rancheria • Mechoopda Indian Tribe of Chico Rancheria • Mooretown Rancheria • California Autochthon Peoples Foundation 	<ul style="list-style-type: none"> • State Water Contractors • Metropolitan Water District 	<ul style="list-style-type: none"> • Butte County Citizens for Fair Government • California Horsemen's Association—Region II • General public

Table 4.1-2. Work group participants.

Land Use, Land Management, and Aesthetics Work Group Participants		
Federal Agencies	State Agencies	Local Government
<ul style="list-style-type: none"> • U.S. Bureau of Land Management 	<ul style="list-style-type: none"> • California Department of Fish and Game • California Department of Water Resources • California Department of Parks and Recreation 	<ul style="list-style-type: none"> • Butte County
Native American Tribes	Water Agencies	Nongovernmental Organizations
<ul style="list-style-type: none"> • Enterprise Rancheria 	<ul style="list-style-type: none"> • State Water Contractors • Metropolitan Water District • Zone 7 Water Agency 	<ul style="list-style-type: none"> • Oroville Recreation Advisory Committee • General public
Engineering and Operations Work Group Participants		
Federal Agencies	State Agencies	Local Government
<ul style="list-style-type: none"> • National Oceanic and Atmospheric Administration Fisheries • U.S. Army Corps of Engineers • U.S. Fish and Wildlife Service 	<ul style="list-style-type: none"> • California Department of Fish and Game • California Department of Water Resources 	<ul style="list-style-type: none"> • Butte County • Butte County Public Works • Butte Water Commission • Plumas County • Sutter County • City of Yuba City • Yuba County Water Agency
Water Agencies	Nongovernmental Organizations	
<ul style="list-style-type: none"> • State Water Contractors • Kern County Water Agency • Metropolitan Water District • Western Canal Water District • South Feather Water and Power Agency • Yuba County Water Agency 	<ul style="list-style-type: none"> • JEM Farms • Natural Heritage Institute representing American Rivers • General public 	

- **Land Use, Land Management, and Aesthetics Work Group:** Addresses project-related issues related to the uses and management of lands within and adjacent to the FERC boundary and issues related to the visual and auditory environment.
- **Engineering and Operations Work Group:** Addresses project-related issues related to the engineering, operation, and maintenance of the Oroville Facilities; also provides modeling support services to the Collaborative. The Engineering and Operations Work Group has also hosted a series of modeling workshops to describe the modeling efforts under way in support of the Collaborative and the decision-making process.

4.1.1.3 Task Forces

Task Forces were established as needed to undertake specific tasks identified by a work group or the Plenary Group. As part of the Task Force process, technical specialists and other participants review and discuss specific subjects associated with one or more resources and provide recommendations to the group that established the task force. Task Forces have been initiated by work groups to assist in the development of technical aspects of study plans, develop interim recreation projects, discuss cross-resource issues, and evaluate potential PM&E measures. More than a dozen Task Forces were established during consultation; a sampling of some of the topics discussed by task forces is provided below.

- Interim Projects identification;
- Recreation study plan development;
- Survey protocols;
- Fish passage;
- Hatchery evaluations;
- Flow and temperature analyses;
- Miscellaneous environmental for fisheries, terrestrial, and water quality studies;
- Operations modeling development;
- Cumulative impact analysis/Endangered Species Act compliance;
- Modeling protocols; and
- Process protocols (early collaboration and prior to settlement talks).

4.1.2 Scoping

A summary of the scoping history of the collaborative process is provided in Table A-2 of Appendix A.

The Collaborative Work Groups spent the first half of 2001 identifying and refining issue statements for Study Plan development and inclusion in Scoping Document 1 (Draft SD1). In September 2001, DWR distributed Draft SD1 to interested parties, which initiated formal scoping for the relicensing process. SD1 supported the development of either two separate environmental documents or a single joint National Environmental Policy Act (NEPA)/California Environmental Quality Act (CEQA) document. It also provided the CEQA Notice of Preparation.

On October 29 and October 30, 2001, public scoping meetings were held in the Cities of Oroville and Sacramento, respectively. The purpose of the meetings was to receive

input from any parties interested in the relicensing process, and to gather information and identify issues regarding specific aspects of the Oroville Facilities relicensing process. More than 100 people signed in at the meetings, and public statements were provided in-person by 21 individuals representing a variety of interested parties. A court reporter recorded all comments and statements made at the scoping meetings; transcripts of the meetings are available on the relicensing website and have been made a part of the FERC public record for the project. Any person who was unable to attend a public scoping meeting or desired to provide further comment was encouraged to submit written comments and information to DWR by November 26, 2001. The entities listed in Table 4.1-3 provided written comments on SD1 as well as in response to the scoping meetings.

Table 4.1-3. Commenters during scoping for the Oroville Facilities relicensing process.

Commenting Entities
Feather River Diverters (Joint Water Districts and Western Canal Water Districts)
United States Department of Commerce, National Oceanic and Atmospheric Administration (NOAA Fisheries)
California Chamber of Commerce
Oroville Foundation of Flight
Southern California Water Committee
State of California Electricity Oversight Board
Association of California Water Agencies
Kern County Water Agency
Alameda County Flood Control & Water Conservation District
Castaic Lake Water Agency
Plumas National Forest
National Parks Service, California Hydro Program
Civil Engineering Services, F.D. Pursell
State Water Resources Control Board
California State Department of Fish & Game
California Independent System Operator
Paleo Resource Consultants, F&F Geo Resources Associates Inc.
Metropolitan Water District of Southern California
Santa Clara County Water District
State Water Contractors Inc.
California Business Properties Association
Pacific Cherokee Tribal Council
Ron Davis
Catherine H. Hodges
Northern California Water Association
Butte County
County of Sutter, Board of Supervisors
California State Department of Forestry and Fire Protection
United States Fish and Wildlife Service
The Baiocchi Family

Throughout 2001 and 2002, the Work Groups further developed issue sheets, identifying both available and needed information to inform the decision-makers regarding potential effects of the Oroville Facilities. The issue sheets formed the basis

for the development of Study Plans. Eventually, 71 Study Plans were developed and approved through the Collaborative process.

DWR issued Scoping Document 2 and Amended Notice of Preparation (SD2) on September 20, 2002. SD2 addressed comments received on SD1 and reflected the progress made since September 2001 in working collaboratively with resource agencies, NGOs, and other interested parties in identifying issues and initiating study programs. SD2 also fulfilled requirements allowing DWR to prepare a PDEA that both complies with NEPA and is adequate in supporting the FERC decision-making process.

4.1.3 Comments on the Draft Application

The draft license application, including a PDEA Progress Summary, was circulated for public review and comment on April 30, 2004. Table 4.1-4 lists the following entities commenting on the draft license application.

**Table 4.1-4. Commenters on the Oroville Facilities
draft license application.**

Commenting Agencies and other Entities
Friends of the River
Ronald Rogers
Randy Kennedy
Yuba-Feather Work Group
State Water Contractors, Inc.
California Department of Fish and Game
U.S. Department of the Interior
County of Sutter
The Baiocchi Family
Dennis Carty
Alex Henes
Gordon Banks

Comment letters received on the draft license application and PDEA Progress Summary can be viewed on the relicensing website, <http://orovillerelicensing.water.ca.gov>.

4.1.4 Interventions

FERC's notice of filing of the license application will include a statement that organizations and individuals may petition to intervene and become a party to any subsequent proceedings.

4.2 COMPLIANCE

As part of the relicensing process, DWR must comply with federal and State laws that are relevant to the relicensing of the Oroville Facilities. A summary of potentially relevant federal and State laws and regulations is provided below, and the current status of compliance with these requirements is provided in Table A-3 of Appendix A.

- **Water Quality Certification.** California Water Code, Section 13160, authorizes the State Water Resources Control Board (SWRCB) to act as the State water pollution control agency for purposes of compliance with Section 401 of the Clean Water Act. Section 401 of the federal Clean Water Act (CWA) requires an applicant for a federal license or permit for an activity that may result in any discharge into navigable waters to provide to the licensing or permitting agency a certification from the state in which the discharge originates that any such discharge will comply with state water quality standards and other appropriate requirements. The SWRCB administers the Section 401 program for the purpose of obtaining a FERC hydroelectric license. Section 401 requires the SWRCB to find that there is a reasonable assurance that an activity will be conducted in a manner that will not violate applicable water quality standards and other appropriate requirements. "Water quality standards and other appropriate requirements" means the applicable provisions of CWA and any other appropriate requirements of state law. Water quality standards consist primarily of designated beneficial uses and the narrative and numerical water quality objectives that are necessary for attainment of the beneficial uses. Certification may be conditioned with other limitations to assure compliance with various CWA provisions.
- **Section 18 Fishway Prescriptions.** Section 18 of the Federal Power Act (FPA) states that FERC is to require construction, maintenance, and operation by a licensee of such fishways as the Secretaries of Commerce and Interior may prescribe. The U.S. Fish and Wildlife Service (USFWS) and National Oceanic and Atmospheric Administration (NOAA) Fisheries are responsible for development of Section 18 conditions.
- **Section 4(e) Federal Land Management Conditions.** Section 4(e) of the FPA provides that any license issued by FERC for a project located within a federal reservation shall be subject to and contain such conditions as the secretary of the responsible federal land management agency deems necessary for the adequate protection and use of the reservation. BLM and USFS have authority over some lands occupied by the Oroville Facilities. It has not been established at this time that the BLM lands are "reservation" lands subject to Section 4(e).
- **Federal Endangered Species Act.** Section 7 of FESA requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of endangered and threatened species or to cause the destruction or adverse modification of the critical habitat of such species. FERC must consult with USFWS and NOAA Fisheries under Section 7.
- **Section 10(j) Recommendations.** Under the provisions of Section 10(j) of the FPA, each hydroelectric license issued by FERC is required to include conditions for the protection, mitigation, and enhancement of fish and wildlife resources affected by the project as may be recommended by NOAA Fisheries, USFWS, and DFG, to the extent FERC determines that such recommendations are not

inconsistent with the FPA. Compliance with the Fish and Wildlife Coordination Act is coordinated through the 10(j) recommendations.

- **National Historic Preservation Act.** Section 106 of the National Historic Preservation Act (NHPA) requires that federal agencies consider the effects of their actions on prehistoric and historic properties. This applies to properties that have been listed in the National Register of Historic Places (NRHP), properties that have been determined to be eligible for inclusion in the NRHP, and properties that may be eligible but that have not yet been evaluated. As relicensing is considered an undertaking under Section 106 of the NHPA, FERC is responsible for ensuring that the Oroville Facilities are compliant with the NHPA. FERC is also required to consult with the California Office of Historic Preservation (OHP) as well as other land management agencies where the undertaking may have an effect, and with federally recognized Indian tribes that may have cultural affiliations with affected properties.
- **Coastal Zone Management Act.** Section 307(c)(3) of the federal Coastal Zone Management Act requires that all federally licensed and permitted activities be consistent with approved state Coastal Zone Management Programs. The City of Oroville is within Butte County, which is not considered coastal; therefore, this regulatory requirement is not applicable.
- **Americans with Disabilities Act.** Public facilities must comply with the Americans with Disabilities Act of 1990 to the extent possible. Needs and considerations regarding the disabled must be addressed and new facilities must comply with Americans with Disabilities Act standards.
- **Clean Water Act Section 303(d) Total Maximum Daily Load.** Section 303(d) of the CWA establishes requirements for states to identify and prioritize water bodies that do not meet water quality standards. For these water quality-limited water bodies, states must calculate the total maximum daily load for the contaminants of concern, set an allowable mass loading level to achieve water quality standards, and adopt a plan of implementation within the applicable water quality management plan (40 Code of Federal Regulations [CFR] Sections 130.2 and 130.7).
- **Clean Water Act Section 402 NPDES Permit Compliance.** The National Pollutant Discharge Elimination System (NPDES) permit system under Section 402 of the CWA applies to discharges of wastes to surface waters of the United States. Under California's Porter-Cologne Water Quality Control Act, the SWRCB and associated Regional Water Quality Control Boards (RWQCBs) regulate discharges of wastes to all waters of the State and land to protect both surface and groundwater. The most applicable NPDES permit for the anticipated activities associated with the Oroville Facilities is the Statewide stormwater permit for general construction activity (SWRCB Order 99-08-DWQ, as amended) that applies to all construction projects that disturb greater than 1 acre of land.

- **Clean Water Act Section 404 Dredge and Fill.** Section 404 of the CWA requires a permit from USACE before any activity that involves any discharge of dredged or fill material into “waters of the United States,” including wetlands. Waters of the United States include navigable waters, interstate waters, all other waters where the use or degradation or destruction of the waters could affect interstate or foreign commerce, tributaries to any of these waters, and wetlands that meet any of these criteria or that are adjacent to any of these waters or their tributaries.
- **California Fish and Game Code Section 1600 (Streambed Alteration).** Section 1600 of the California Fish and Game Code states that any entity proposing to substantially divert or obstruct the natural flow or alter streambed materials, channel, or bank in any river, stream, or lake must provide a detailed description of the proposed project location and map, name and description of the river, stream, or lake affected by streamflow diversions, and copies of applicable local, State, or federal permits and/or other documents already issued.
- **California Fish and Game Code Section 5937 (Flows Below Dams).** Section 5937 of the California Fish and Game Code states that the owner of any dam must provide sufficient water at all times through a fishway, or in the absence of a fishway, allow sufficient water to pass over, around or through the dam, to keep any fish below the dam “in good condition.”
- **California Fish and Game Code Sections 5980–5993 (Fish Screening).** Sections 5980–5993 of the California Fish and Game Code states that conduits with a maximum flow capacity greater than 250 cubic feet per second of water must be examined by DFG. It is the responsibility of the owner of a conduit to install a screen when deemed by DFG that it is necessary to prevent fish from passing into the conduit.
- **California Endangered Species Act (California Fish and Game Code Sections 2050–2116).** The California Endangered Species Act (CESA) declares that deserving plant or animal species will be given protection by the State because they are of ecological, educational, historical, recreational, aesthetic, economic, and scientific value to the people of California. CESA established that it is State policy to conserve, protect, restore, and enhance endangered species and their habitats. CESA pertains only to State-listed rare, threatened, or endangered plant and wildlife species. CESA requires State agencies to consult with DFG when preparing CEQA documents to ensure that agency actions do not jeopardize State listed species.
- **SWP Authorization (Burns-Porter Act).** In 1951, the California State Legislature authorized construction of a water storage and supply system to capture and store runoff in Northern California and deliver it to areas of need throughout the State. Subsequently, in 1959, the Burns-Porter Act was passed by the Legislature, providing the mechanism for funding the planning, design, and construction of the required facilities. In 1960, California voters approved the

issuance of \$1.75 billion worth of general obligation bonds, as authorized by this act, thereby providing funding for the initial phases of the SWP, including the Oroville Facilities. These bonds are repaid from the revenues received from water supply contracts.

- **State Water Code Section 11900-11901 (Implementing the Davis-Dolwig Act).** Chapter 10, Part 3, Division 6 of the California Water Code states that State facilities for the storage, conservation, or regulation of water be constructed in a manner consistent with the full utilization of their potential for the enhancement of fish and wildlife and to meet recreational needs. It specifies that providing for the enhancement of fish and wildlife and for recreation in connection with water storage, conservation, or regulation facilities benefits all of the people of California and that project construction costs attributable to such enhancement of fish and wildlife and recreation features should be borne by them. It further states that State recreation and the enhancement of fish and wildlife resources are among the purposes of state water projects; that the acquisition of real property for such purposes be planned and initiated concurrently with and as a part of the land acquisition program for other purposes of state water projects; and that facilities for such purposes be ready and available for public use when each state water project having a potential for such uses is completed. DWR is required to operate the Oroville Facilities, as well as all other SWP features, in accordance with this Act.
- **Fish and Wildlife Coordination Act (16 United States Code [USC] 661 et seq.).** The purpose of this act is to recognize the contribution of fish and wildlife resources to the nation. The goal is to ensure that fish and wildlife conservation receives equal consideration and is coordinated with other features of water resources development programs. The statute provides that whenever the waters of any stream or other body of water are proposed to be impounded, diverted, the channel deepened, or otherwise controlled or modified, the responsible federal agency shall consult with USFWS and/or NOAA Fisheries, as appropriate. DFG comments are also incorporated into the Fish and Wildlife Coordination Act report, which is then forwarded to the responsible agency.
- **Magnuson-Stevens Fishery Conservation and Management Act (16 USC 1801 et seq.).** The purpose of this act is to conserve and manage anadromous fishery resources of the United States. The act establishes eight Regional Fishery Management Councils to prepare, monitor, and revise fishery management plans, which will achieve and maintain the optimum yield from each fishery. In California, the Pacific Fishery Management Council is responsible for achieving the objectives of the statute. The Secretary of Commerce has oversight authority. The statute was amended in 1996 to establish a new requirement to describe and identify “essential fish habitat” (EFH) in each fishery management plan. EFH is defined as “those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.” EFH has been established by NOAA Fisheries for waters in California supporting anadromous fish. In 1999, the Pacific Fishery Management Council identified EFH for Central

Valley Chinook stocks to include the Sacramento and San Joaquin Rivers. No EFH was identified in the Feather River upstream of Oroville Dam.

- **Migratory Bird Treaty Act of 1972.** The Migratory Bird Treaty Act (16 USC 703–712) prohibits the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests, except when specifically authorized by the U.S. Department of the Interior.
- **U.S. Army Corps of Engineers Flood Storage Requirements under the Flood Control Act of 1944 (Act of Congress, Public Law [PL] 78-534, 58 Stat. 890).** During fall, winter, and spring, the Oroville Facilities are operated under flood control requirements specified by USACE in accordance with the provisions of the Flood Control Act of 1944. Under these requirements, Lake Oroville is operated to maintain up to 750,000 af of flood storage space to allow for the capture of significant flood inflows.
- **Executive Order 11988 (Protection of Floodplains), 1977.** Executive Order (EO) 11988 requires all agencies having jurisdiction to take actions to reduce the risk of flood loss; minimize the impact of floods on human safety, health, and welfare; and restore and preserve the natural and beneficial values served by floodplains. These agencies are directed by this order to assume responsibility for evaluating the potential effects of any actions they may take in a floodplain to ensure that their planning programs reflect considerations for appropriate floodplain management.
- **Executive Order 11990 (Protection of Wetlands), 1977.** EO 11990 requires each agency having jurisdiction to minimize the destruction, loss, or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands. Further, the agencies are directed to avoid undertaking or providing assistance for any new construction located in wetlands unless the head of the agency finds that there is no practicable alternative to such construction and that the proposed action includes all practicable measures to minimize harm to the affected wetlands.
- **Executive Order 12898 (Environmental Justice for Low Income and Minority Populations), 1994.** EO 12898 provides that each federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. The order calls for the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. “Fair treatment” means that no group of people, including racial, ethnic, or socioeconomic groups, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal or commercial operations. Environmental justice is the fair treatment and meaningful involvement of all

people—regardless of race, ethnicity, income, or education level—in environmental decision making. Environmental justice programs promote the protection of human health and the environment, empowerment via public participation, and the dissemination of relevant information to inform and educate affected communities.

- **Federal Land Policy and Management Act of 1976.** This Land Policy and Management Act describes how federal lands shall be managed on the basis of multiple use and sustained yield unless otherwise specified by law. It also requires that these federal lands be periodically and systematically inventoried, and provides for the judicial review of land use planning procedures. The act requires that the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values; and that where appropriate, certain public lands will be preserved and protected in their natural condition to provide food and habitat for fish, wildlife, and domestic animals, and also to provide for outdoor recreation and human occupancy and use.
- **American Indian Religious Freedom Act of 1978 (PL 95-341; 42 USC 1996).** The American Indian Religious Freedom Act establishes federal policy to protect and preserve the inherent rights of freedom for American Indians, Eskimos, Aleuts, and Native Hawaiians to believe, express, and exercise their traditional religions. These rights include, but are not limited to, access to sites, use and possession of sacred objects, and the freedom to worship through traditional ceremonies and rites.
- **Antiquities Act of 1906 (16 USC 431–433).** The Antiquities Act authorizes the President of the United States to designate National Monuments and provides criminal penalties (fines and/or imprisonment) for the unauthorized excavation, injury, or destruction of prehistoric or historic ruins and objects of antiquity located on federal lands. This act applies to the public lands administered by BLM and USFS within the FERC project boundary.
- **Archaeological Resources Protection Act of 1979 (16 USC 470aa–mm).** The Archaeological Resources Protection Act (ARPA) amends the Antiquities Act, sets a broad policy that archaeological resources are important to the nation and should be protected, and requires special permits before the excavation or removal of archaeological resources from federally managed lands and Indian lands. This act is applicable to public lands within the FERC project boundary that are managed by BLM and USFS. ARPA also provides for maintaining the confidentiality of information on the nature and location of archaeological sites.
- **Wild and Scenic Rivers Act (Title 16, Chapter 28, Section 1278).** The Wild and Scenic Rivers Act of 1968 (PL 542, 16 USC 1271–1287) establishes the policy that certain rivers and their immediate environments which possess outstanding scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values will be preserved and protected. Section 10 of this act

requires that each component of the Wild and Scenic Rivers System be administered in such a manner as to protect and enhance the values for which the river was designated. Under this act, federal agencies that have discretionary decision-making authority (i.e., permitting authority) must review the proposed project in relation to Sections 7 and 10 of the act to determine if the proposed project would affect the values of the Wild and Scenic River.

- **California Environmental Quality Act.** CEQA compliance is required for actions involving State decision-making that may have an effect on the environment. DWR and the SWRCB will be required to comply with CEQA to obtain a Section 401 Water Quality Certification from the SWRCB under its requirements to comply with the CWA. CEQA, as amended January 1, 2004 (Public Resources Code Sections 21000–21178), and the Guidelines for the California Environmental Quality Act (California Code of Regulations Title 14, Chapter 3, Sections 15000–15387) require DWR to consider the direct and indirect environmental effects in its relicensing-related decision making. DWR will prepare an environmental impact report (EIR) to support its decision making, although an EIR is not required to be included in the FERC Application for License. The Proposed Project for CEQA is considered DWR's implementation of the terms and conditions of the new FERC license, and/or terms and conditions contained in the settlement agreement, if different.